IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2534 OF 2007

Rohidas N. Patil..... .....
Petitioner
V/s
Bombay Dyeing Mfg. Co. Ltd. ... .
Respondents.

M/s.V.M.Parkar, S.I.Kazi and S.K.Kazi, Advocates for the petitioner.

Mrs.Meena Doshi, Adv. For the respondents.

CORAM: A.P. DESHPANDE, J.
11.4.2007

PC:

By this petition the petitioner seeks to challenge an award passed by the 9th Labour Court dated 13.6.2006 dismissing the reference. The petitioner was working as clerk in share department of the respondent-company and was dismissed from service as the charges of misconduct were established against him in departmental inquiry.

2. On 23.2.88 one Smt.Minal J. Jhaveri, a shareholder of the Company approached office of the respondent and complained about not receiving new sub-divided shares issued by the company consequent upon sub-division of the company's shares. Respondent scrutinized its record and found that the transfer form was duly filled in and purportedly bearing signature of Mrs.Minal J. Jhaveri as transferor to one Sushil Desai had been lodged with the company. When the transfer form was shown to Mrs.Minal J. Jhaveri she

denied the signature on transfer form and claimed that her signature had been forged thereon. She denied having received sub-divided shares or having transferred the same to any person. As the petitioner was personally entrusted with the acceptance and verification of transfer forms he was served with a memo dated 23.2.88and called upon to explain discrepancy in the matter. The petitioner submitted his explanation on 24.2.88 wherein the petitioner has admitted that he had fraudulently sold and/or transferred the shares of Mrs.Minal J. Jhaveri and also admitted that he forged or transferred about 2305 shares of different dormant shareholders of the company. Along with the explanation the petitioner also submitted a detailed statement listing out 27 other cases of dormant shareholders wherein fictitious transfers were made in the manner akin to the one in relation to Mrs.Minal J. Jhaveri. The petitioner also admitted that the fictitious transfers were made at the instance of one Mr.Dalal who used to visit the petitioner and pay him money in cash for the shares given by the petitioner to him. After the petitioner confessed of having fraudulently dealt with the transfer of shares in about 28 accounts he also promised to refund the money to the company by sale of his flat and jewelery. On coming to know of various fraudulent and fictitious transactions the respondent served the petitioner with a charge sheet setting out therein the details in regard to fraud allegedly committed by the petitioner. The petitioner was called upon to explain the bogus and fraudulent transfers of 3126 shares and was charged with dishonesty, cheating, forgery etc. The petitioner was called upon to submit reply to the charge sheet within stipulated period. The petitioner did not reply to charge

sheet and though afforded an opportunity to participate in the inquiry proceeding did not avail of the opportunity and chose to remain absent. Thus the respondent was forced to go on with the inquiry ex-parte in the absence of the petitioner. The inquiry officer recorded the evidence of witnesses for the respondent and submitted his report holding the petitioner guilty of serious charges of misconduct. The petitioner was served with the dismissal order dated 27.12.1988. It appears that belatedly petitioner moved authorities and reference came to be made to the Labour Court which came to be numbered as IDA Reference No.779/97. It was for the first time in the year 1997 when statement of claim came to be filed by the petitioner it was averred that the explanation given by the petitioner on 24.2.88 admitting his guilt was so procured by adopting coercive means. From the year 1988 till the year 1997 petitioner did not make any complaint to any of the authorities that his statement was procured on 24.2.88 admitting the guilt by coercion. Be it as it may, the Labour Court after consideration of the evidence and material on record found that the inquiry conducted by the respondent was just and fair, the same was legal and in adherence to the principles of natural justice. It further concluded that the charges of misconduct alleged against the petitioner in the charge sheet are proved and the punishment of dismissal awarded by the respondent was just and proper. The Reference came to be answered in negative and came to be dismissed.

3. In these facts and circumstances learned counsel for the petitioner has contended in the first place that the petitioner has been acquitted in the criminal case by Additional Chief Metropolitan Magistrate vide judgment

dated 28.6.1996. Perusal of the judgment clearly indicates that the petitioner was acquitted by giving him benefit of doubt. What is relevant to note is that the departmental inquiry was completed long back which culminated in issuance of an order of dismissal in December, 1988. Hence the judgment rendered in criminal case will have no bearing on the decision taken by the respondent on the basis of report in departmental inquiry. Even otherwise in a criminal trial prosecution has to prove the guilt beyond reasonable doubt. Whereas the test in the departmental inquiry is pre-ponderance of probabilities. It is then submitted by the learned counsel for the petitioner that the respondent ought not to have proceeded with departmental inquiry as criminal case was pending. The record reveals that departmental inquiry was over much prior to filing of charge sheet in the criminal case. Even otherwise the petitioner has admitted that he had not moved any application before the inquiry officer or the respondent making prayer for stay of the proceedings in the departmental inquiry on the ground that the criminal case was either in contemplation or was pending. As the petitioner has chosen not to move such an application, he cannot now make a grievance that the inquiry officer ought not to have proceeded with the departmental inquiry. Perused the award passed by the Labour Court. No fault can be found with the same. There is no merit in the petition. Same is summarily dismissed.